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October 25, 2021

By ECF and Email

The Honorable Lewis A. Kaplan
United States Magistrate Judge
United States Courthouse
500 Pearl Street
New York, NY 10007

Re: *Daniel Kleeberg et al. v. Lester Eber et al.*, 1:16-cv-09517-LAK-KHP
Response to Defendants' Request to File a Reply on Subject Matter Jurisdiction

Dear Judge Kaplan,

This morning, Defendants made their predictable request to file a reply brief on subject matter jurisdiction so that this Court effectively allows them to have filed a dispositive motion over four years late, and a month after the trial already concluded. This Court should deny that request. Defendants do not even attempt to offer an excuse for why they waited so long to raise this dispositive issue, nor for why they did not earlier apprise Plaintiffs and this Court that they were withdrawing their Tenth, Eleventh, and Fifteenth Affirmative Defenses, which consumed a significant portion of the trial evidence and Plaintiffs' post-trial submissions. ECF No. 241.

If this Court does permit a reply, it should be due no later than November 8, 2021. There is a settlement conference before Magistrate Judge Parker on November 9, and it is extremely unlikely that a settlement could be reached if Defendants are not required to have placed all of their cards on the table, particularly when it is an issue that they will contend requires this entire litigation to be started anew in the Monroe County Surrogate's Court. If this Court is inclined to permit Defendants to file a reply after November 8, Plaintiffs would prefer that this Court just deny Plaintiffs' request for additional time to address this new issue.

Respectfully submitted,



Brian C. Brook

cc: All counsel of record